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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,214	02/18/2004	Floyd Backes	160-033	1930
34845	7590	12/06/2006	EXAMINER	
McGUINNESS & MANARAS LLP			TRAN, THIEN D	
125 NAGOG PARK			ART UNIT	
ACTON, MA 01720			PAPER NUMBER	
			2616	

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SY

Office Action Summary	Application No. 10/781,214	Applicant(s) BACKES ET AL.	
	Examiner Thien D. Tran	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)


- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

-  2. Claim 1⁶ is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the limitation "the alternative access point transmits at less than full power" is not confusion. The specification on page 6, figure 6 and figure 7 discloses making the channel selection at an access point according to the power level strength of the beacons, not according to "full power". The term "full power" is not set at a particular level. 3 db can be the "full power" at AP 1, 10 db can be the "full power" at AP2...etc.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Crosbie (U.S Patent No. 2002/0085719).

Regarding claim 1, Crosbie discloses a method use by a wireless device in a wireless communications environment, paragraph 0034, the method comprising the steps of:

associating with a AP 24-1 (current access point), figure 1;

ascertaining, by the wireless device, whether the wireless device should attempt to associate with an AP 24-2 (alternative access point), paragraph 0039, the ascertaining based at least in part on a signal strength (level of attenuation of signal strength) of transmission from the alternative access point where the alternative access point transmits at less than full power, paragraph 0047;

requesting association with the alternative access point if is ascertained that the wireless device should attempt to associate with the alternative access point, paragraph 0044.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 3, 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crosbie (U.S Patent No. 2002/0085719) in the view of Stewart (U.S Patent No. 5,633,888).

Regarding claim 2, Crosbie discloses the measurement of signal strength and attenuation, paragraph 0047. Crosbie does not disclose the step of automatically collecting information about other access points. Stewart discloses that the mobile device periodically (automatically) scans information related to signal strength of adjacent Aps (other Aps), col.8 line 60. Therefore, it would have been obvious to one having ordinary skill in the art to have the step of automatically collecting information about other access points included in the method of Crosbie so that information about neighbor Aps can be updated regularly.

Regarding claim 3, Crosbie discloses that the step of ascertaining ascertains that the wireless device should attempt to associate with another access point if the access point moves closer the range of AP 24-2 or in loading, paragraph 0044 (closer than the current access point with account in loading), paragraph 0041.

Regarding claim 5, Crosbie discloses that the step of requesting association requests association by sending a message to the access point, paragraph 0044.

Regarding claim 6, Crosbie discloses that the step of ascertaining ascertains that the wireless device should attempt to associate with the alternative access point based at least in part on signal strength (maximum potential signal strength) of the alternative access points, paragraph 0047.

Allowable Subject Matter

7. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Thien Tran whose telephone number is (571) 272-3156. The examiner can normally be reached on Monday-Friday from 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To, can be reached on (571) 272-7629. Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

Patent Examiner

Thien Tran



DORIS H. TO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600